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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

WILLIAM KNELL,

Plaintiff and Appellant,

v.

DOUGLAS MILLER,

Defendant and Appellant.

2d Civil No. B243425  
(Super. Ct. No. 56-2010-  
00370806-CU-BC-SIM)  
(Ventura County)

When plaintiff sold his business he insisted that his landlord release him from liability under his existing commercial lease. Landlord agreed, and the parties signed a mutual release. Thereafter, plaintiff sued his landlord for damages arising under the lease. The trial court awarded damages to plaintiff. We reverse. The release barred any recovery of damages.

FACTS

On August 1, 1993, William Knell leased from the Resolution Trust Corporation (RTC) a commercial premises in Simi Valley for 10 years with a 10-year option to renew. Pursuant to the lease, Knell paid the RTC a security deposit of \$7,747. Knell owned and operated a business known as Big Al's Pet Food Warehouse from the leased premises.

In January 1994, the premises suffered significant earthquake damage. The authorities issued a yellow tag. The RTC constructed a scaffolding around the building, but the work was not completed until September 1994. Dissatisfied with the progress of the repairs, Knell withheld rent for June, July and August 1994.

Douglas Miller purchased the premises from the RTC in July 1994. He received Knell's lease and the \$7,747 security deposit. Miller completed the earthquake damage repair. Miller wrote to the RTC in July 1994, stating he can understand why Knell does not feel the need to pay back rent. Miller requested that the matter be closed.

In April 2003 Knell exercised his option to renew the lease until August 1, 2013.

By April 2007, Knell wanted to sell his business and retire. The lease provided, however, that the lessor's consent to assignment or subletting shall not release the lessee of his obligations under the lease.

Knell testified that from the time he began to contemplate selling the store, his requirement was that the purchaser would obtain a new lease, that his lease would terminate and he would be released from any liability under the lease. Knell told Miller of this requirement.

Knell presented two potential buyers to Miller in June 2008. Miller demanded \$75,000 for an early termination of the lease. Neither Knell nor the potential buyers were willing to pay that amount, so the transaction did not go forward.

Lora Heister was interested in purchasing Knell's business. One of Heister's concerns was the air conditioning at the store. Knell had problems with the air conditioning since he opened the store. The lease obligated Knell to keep the air conditioning in good working order. Knell agreed to replace the air conditioners prior to the sale of the business.

Havi Kreimer of Kreimer Air, Inc., provided an estimate for the installation of seven new air conditioning units at a cost of \$30,675. Change orders approved by Miller brought the total cost to \$45,923.11. Knell agreed to pay only \$30,675. The air conditioning work was completed in March 2009.

On April 24, 2009, Knell and Heister entered into a purchase agreement for Big Al's Pet Food Warehouse. The purchase price was \$1,050,000. The purchase was made contingent on Heister negotiating a new lease with Miller. The parties opened escrow.

The next day, Miller submitted a letter to escrow demanding payment of \$104,110 for early termination of Knell's lease; \$1,750 in legal expenses for reviewing three proposed sales; and \$45,923 for replacement of the air conditioning units, plus \$2,097 in interest accrued for late payment; for a total of \$156,040.

Knell notified escrow and Miller that he did not approve payment. He stated the only amount he agreed to pay was approximately \$35,000 to replace the air conditioning. Heister threatened to sue Knell for breach of the purchase agreement when he unilaterally cancelled escrow.

In June 2009, Miller sent Knell a three-day notice to pay rent or quit. He wanted payment for the air conditioning units. Knell sent Miller a check for \$49,472.24. He advised Miller that the payment was being made "under protest." Knell testified he made this payment to avoid being evicted.

Also, in June 2009 Miller increased his demand for terminating Knell's lease to \$106,850. He increased the demand in September to \$110,960.

In September 2009, Knell and Heister reached an agreement. Heister agreed to an increase in the purchase price from \$1,050,000 to \$1,065,000 and to pay the termination fee demanded by Miller in excess of \$100,000.

On September 10, 2009, Heister and Miller entered into a new lease. Knell deposited \$100,000 into escrow as well as \$1,802.94 for legal fees Miller expended in reviewing the sales transactions.

On September 25, 2009, Knell and Miller entered into a written release and cancellation of lease. The release stated in part: "Lessor and Lessees hereby release[] each other from any and all liabilities of any type whatsoever, known or unknown, direct or indirect, which existed prior to the date of the closing of the bulk sale. This includes any and all liabilities which arose from and/or relate to the lease of the property by the

Lessees and/or any guaranty or guarantees of the lease of the property by the collective Lessees."

Escrow closed on October 28, 2009.

After close of escrow, Knell requested a return of his security deposit in the amount of \$7,747. Miller refused the request, stating that he applied the deposit to the August 1994 rent.

In April 2010, Knell filed the instant action against Miller seeking the return of the \$100,000 cancellation fee; \$48,020 paid for the air conditioning units under protest; \$1,750 paid in attorney fees and the \$7,747 security deposit.

Trial was by the court. The court found: Miller did not breach the lease by demanding \$100,000 to release Knell from liability. Knell had no contractual duty to pay to replace the air conditioning units. The \$48,020.81 he paid Miller under protest was the result of "coercion." The \$1,750 Knell paid for attorney fees was also obtained by "coercion." Finally, the trial court found there was insufficient evidence that Knell failed to pay the August 1994 rent, or if not paid that waiver prohibited the collection of the rent 15 years after it was due.

The court awarded Knell the \$48,020.81 Knell paid for the air conditioners, the \$1,750 Knell paid for attorney fees and the return of Knell's security deposit in the amount of \$7,747. The court found neither party prevailed and awarded no costs or attorney fees. The statement of decision does not mention the release.

## DISCUSSION

### *MILLER'S APPEAL*

#### I.

Miller contends the trial court erred in not disposing of all of Knell's claims based on the release.

A written release extinguishes all obligations covered by its terms provided it has not been obtained by fraud, deception, misrepresentation, duress or undue influence. (*Skrbina v. Fleming Companies, Inc.* (1996) 45 Cal.App.4th 1353, 1366.) Here the release by its terms covered all liabilities of the parties, known and unknown,

that existed prior to the closing of the bulk sales transaction. All of the alleged liabilities on which Knell sued existed prior to the execution of the release and closing of escrow. Thus on its face, the release covered all of those liabilities.

Knell argues the release was obtained by duress. He cites *Cross Talk Productions, Inc. v. Jacobson* (1998) 65 Cal.App.4th 631, 644, for the proposition that the doctrine of economic duress applies "when one party has done a wrongful act which is sufficiently coercive to cause a reasonably prudent person, faced with no reasonable alternative, to agree to an unfavorable contract."

In raising the argument, Knell does his best to ignore the obvious: it was Knell who insisted on the release. Knell testified, "My demands or requirement from the inception of me contemplating selling the store was that [the purchaser] would obtain a new lease, that my lease would be terminated." When asked by defense counsel, "And you would be released?" Knell answered, "That's correct." Knell fails to explain how an agreement he insisted on could be the product of duress. That alone is sufficient to defeat Knell's claim of duress as a matter of law.

In spite of his own testimony, Knell claimed at oral argument that it was Heister who insisted on the release. Knell argued, without citation to the record, that Heister testified the release was drafted by her attorney. But evidence Heister's attorney drafted the release does not show Miller placed Knell under duress. If anything, such evidence would tend to exonerate Miller.

In any event, even without Knell's testimony that he demanded the release from the inception, there is no evidence of duress. When asked if he realized the release meant the lessor had no further obligation to him under the lease agreement, Knell replied, "I never even thought of this in that way." There is no duress if Knell "never even thought of [it]."

Nor does Knell point to any wrongful act on Miller's part that coerced him into executing the release. Knell points out that the trial court found he was coerced into paying for air conditioners when Miller served him with a three-day notice to pay rent or quit. Knell paid "under protest" because he feared losing his lease. But that does not

show the release was a product of duress. He paid for the air conditioning under protest, but raised no protest about the release. Instead, he accepted the benefit of the agreement. He will not now be able to avoid its burden.

Knell claims he was presented with the release just prior to the close of escrow. But the record belies that claim. The record shows Knell signed the release on September 25, 2009, and that escrow closed over a month later on October 28, 2009. Knell had more than enough time to protest the release.

Knell complains he had no reasonable alternative to signing the release. He claims that had he not signed the release, Heister would have sued him for breach of contract. But he had the alternative of structuring the transaction with a lease assignment. That would not have required him to sign a release. An assignment, however, would have left him liable for the approximately \$700,000 in rent that was due until the end of the lease term. (See *De Hart v. Allen* (1945) 26 Cal.2d 829, 832 [assignment of lease does not release lessee of his obligations].) If Knell felt duress it was of his own making, not any wrongful act on Miller's part.

Knell cites two cases in which he claims duress was found in the execution of a release under similar circumstances. In *Smith v. Occidental & Oriental S.S. Company* (1893) 99 Cal. 462, plaintiff, a stevedore, sustained serious injuries in a work-related accident. The defendant presented a release executed by plaintiff as a defense to plaintiff's action for damages. The plaintiff claimed that "by reason of the pain and suffering consequent upon the injuries he had received, he was incapacitated from attending to business, and ignorant of the consequence of said instrument, and signed the same without knowing or understanding what he was doing . . . ." (*Id.*, at p. 470.) Our Supreme Court held the jury was justified in finding plaintiff did not understand "the contents or purport of the instrument." (*Id.*, at p. 471.)

In *Megee v. Fasulis* (1943) 57 Cal.App.2d 275, plaintiff sued to recover for injuries sustained when he slipped and fell on a stairway on defendant's premises. While he was in the hospital, plaintiff informed the hospital manager that he could not pay the hospital or the doctor. The manager told plaintiff that the hospital could not afford to

care for him indefinitely without an assurance of funds. The manager contacted the defendant's insurance adjuster. The doctor and hospital agreed with the insurance adjuster that they could accept \$300. The hospital manager took the adjuster to plaintiff's hospital room. The adjuster told plaintiff that he had no case, and that if he signed a paper his medical bills would be paid. Plaintiff signed the paper without knowing it was a release.

If anything, the cases on which Knell relies demonstrate just how far his circumstances were from the circumstances under which a finding of duress may be justified. When Knell signed the release, his mind was not clouded by pain, nor was he in a hospital threatened with having his medical treatment terminated. At the time Knell signed the release, he was a certified public accountant with substantial business experience, engaged in an ordinary business transaction.

Finally, Knell points out that the release was not between himself and Miller. Instead, the release named Knell as lessee and Miller's LLC as lessor. But the uncontradicted evidence is that the LLC was dissolved soon after escrow closed and that Miller was its sole managing member. The release as an asset of the LLC would pass to Miller as an LLC member upon dissolution. (See Corp. Code, §§ 17350.5, subd. (a)(5); 17353.)

The judgment must be reversed.

#### *KNELL'S APPEAL*

#### II.

Knell contends the trial court erred in concluding Miller did not breach the lease by demanding \$100,000 to release Knell.

Knell argues that Miller had no right to demand a cancellation fee because the lease did not provide for one. But Knell renewed the lease until August 1, 2013. In the absence of a lease provision allowing early termination, Knell was obligated to perform all the lease covenants, including the covenant to pay rent, until that date. (See *Gould v. Corinthian Colleges, Inc.* (2011) 192 Cal.App.4th 1176 [lessee's exercise of early termination provision in lease].) Because the lease here contained no provision for

early termination, Miller had no obligation to release Knell. Thus Miller was free to demand any price he wanted for the release. Knell cites no authority for the proposition that the covenant of good faith and fair dealing requires a party to renegotiate a contract at the unilateral insistence of the other party.

In any event, the release covered the \$100,000 Knell paid for early termination of his lease.

The judgment is reversed. Costs on appeal are awarded to Miller.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Frederick H. Bysshe, Judge  
Superior Court County of Ventura

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